

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to home- and community-based services eligibility and providing an opportunity for public comment

The Human Services Department hereby proposes to amend Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” and Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code chapter 249A.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 249A.

Purpose and Summary

The purpose of these proposed amendments to the Home- and Community-Based Services (HCBS) Habilitation program is to adopt the Level of Care Utilization System (LOCUS) for adults ages 19 and older and Child and Adolescent Level of Care Utilization System (CALOCUS) for youth ages 16 to 18 for the purposes of the needs-based eligibility determination, person-centered service planning, and HCBS tier authorization. These amendments also add provisions related to intensive residential habilitation services as defined in rule 441—25.1(331), adopt training criteria for direct service staff providing HCBS services, and clarify the scope of services included in Home-Based Habilitation (HBH).

Fiscal Impact

Assumptions are based on the change in the HBH service eligibility criteria of individuals accessing services under each of the tiers for HBH. The SFY22 State share estimate assumes the COVID-19-related increase in the Federal Medical Assistance Percentage (FMAP) will remain in effect through December 2021. The estimate does not include the potential 10 percent FMAP increase for HCBS waiver services authorized through the American Rescue Plan Act since decisions on this FMAP increase are still pending. This rule making will change the assessment tool for this population from the current interRAI to the LOCUS/CALOCUS assessment tool. The contractor costs associated with completing the assessments are comparable between these tools, so no additional administrative impact is anticipated. Use of the new assessment tool is expected to shift utilization across the HBH reimbursement tiers. Estimates were derived from Optumas using historical data from Iowa Total Care and Amerigroup on utilization and costs for different tiers of service. Funding will need to come from the existing Medical Assistance appropriation. Providers will likely see increased Medicaid payments due to the redistribution of members by reimbursement tier.

Jobs Impact

The impact on jobs is unknown at this time but is anticipated to be minimal.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on July 6, 2021. Comments should be directed to:

Nancy Freudenberg
Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: appeals@dhs.state.ia.us

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new** definition of “Intensive residential service homes” in subrule **77.25(1)**:

“*Intensive residential service homes*” or “*intensive residential services*” means intensive, community-based services provided 24 hours per day, 7 days per week, 365 days per year to individuals with a severe and persistent mental illness who have functional impairments and may also have multi-occurring conditions. Providers of intensive residential service homes are enrolled with Medicaid as providers of HCBS habilitation or HCBS intellectual disability waiver supported community living and meet additional criteria specified in 441—subrule 25.6(8).

ITEM 2. Amend subrule 77.25(8) as follows:

77.25(8) Home-based habilitation.

a. The following agencies may provide home-based habilitation services:

~~a.~~ **(1)** An agency that is certified by the department to provide supported community living services under:

~~(1)~~ **1.** The home- and community-based services intellectual disability waiver pursuant to rule 441—77.37(249A); or

~~(2)~~ **2.** The home- and community-based services brain injury waiver pursuant to rule 441—77.39(249A).

~~b.~~ **(2)** An agency that is accredited under 441—Chapter 24 to provide supported community living services.

~~c.~~ **(3)** An agency that is accredited by the Commission on Accreditation of Rehabilitation Facilities as a community housing or supported living service provider.

~~d.~~ **(4)** An agency that is accredited by the Council on Quality and Leadership in Supports for People with Disabilities.

~~e.~~ (5) An agency that is accredited by the Council on Accreditation of Services for Families and Children.

~~f.~~ (6) An agency that is accredited by the Joint Commission on Accreditation of Healthcare Organizations.

b. Direct support staff providing home-based habilitation services shall meet the following minimum qualifications in addition to the other requirements outlined in this rule:

(1) A person providing direct support shall be at least 18 years old and have a high school diploma or its equivalent.

(2) A person providing direct support shall not be an immediate family member of the member receiving services.

(3) A person providing direct support to members receiving intensive residential habilitation services shall complete 48 hours of training within the first year of employment in mental health and multi-occurring conditions pursuant to 441—subrule 25.6(8).

(4) A person providing direct support to members receiving home-based habilitation services shall complete a minimum of 24 hours of training within the first year of employment in mental health and multi-occurring conditions, including but not limited to the following topics:

1. Mental health diagnoses, symptomology, and treatment;

2. Intervention strategies that may include applied behavioral analysis, motivational interviewing, or other evidence-based practices;

3. Crisis management, intervention, and de-escalation;

4. Psychiatric medications, common medications, and potential side effects;

5. Member-specific medication protocols, supervision of self-administration of medication, and documentation;

6. Substance use disorders and treatment;

7. Other diagnoses or conditions present in the population served; and

8. Individual-person-centered service plan, crisis plan, and behavioral support plan implementation.

(5) A person providing direct support to members receiving home-based habilitation services shall complete a minimum of 12 hours of training annually on the topics listed in subparagraph 77.25(8) “b”(4), or other topics related to serving individuals with severe and persistent mental illness.

c. The department shall approve living units designed to serve up to four persons except as necessary to prevent an overconcentration of supported community living units in a geographic area.

d. The department shall approve a living unit designed to serve five persons if both of the following conditions are met:

(1) Approval will not result in an overconcentration of supported community living units in a geographic area; and

(2) The county in which the living unit is located provides to the bureau of long-term care verification in writing that the approval is needed to address one or more of the following issues:

1. The quantity of services currently available in the county is insufficient to meet the need; or

2. The quantity of affordable rental housing in the county is insufficient to meet the need; or

3. Approval will result in a reduction in the size or quantity of larger congregate settings.

ITEM 3. Adopt the following **new** definitions of “Child and Adolescent Level of Care Utilization System,” “Intensive residential service homes,” “Level of Care Utilization System” and “Severe and persistent mental illness” in subrule **78.27(1)**:

“*Child and Adolescent Level of Care Utilization System*” or “*CALOCUS*” means the comprehensive functional assessment tool utilized to determine eligibility for the habilitation program and service authorization for the home-based habilitation service for individuals ages 16 to 18.

“*Intensive residential service homes*” or “*intensive residential services*” means intensive, community-based services provided 24 hours per day, 7 days per week, 365 days per year to individuals with a severe and persistent mental illness who have functional impairments and may also have multi-occurring conditions. Providers of intensive residential service homes are enrolled with Medicaid

as providers of HCBS habilitation or HCBS intellectual disability waiver supported community living and meet additional criteria specified in 441—subrule 25.6(8).

“*Level of Care Utilization System*” or “*LOCUS*” means the comprehensive functional assessment tool utilized to determine eligibility for the habilitation program and service authorization for the home-based habilitation service for individuals ages 19 and older.

“*Severe and persistent mental illness*” means the same as defined in rule 441—25.1(331).

ITEM 4. Amend subrule 78.27(2) as follows:

78.27(2) Member eligibility. To be eligible to receive home- and community-based habilitation services, a member shall meet the following criteria:

a. Age. The member is at least 16 years of age or older.

b. LOCUS/CALOCUS actual disposition. The member has a LOCUS/CALOCUS actual disposition of level one recovery maintenance and health management or higher on the most current LOCUS/CALOCUS assessment completed within the past 30 days.

~~a. c.~~ Risk factors. The member has at least one of the following risk factors:

(1) The member has undergone or is currently undergoing psychiatric treatment more intensive than outpatient care (e.g., crisis response services, subacute mental health services, emergency services, alternative home care, partial hospitalization, or inpatient hospitalization) more than once in the member’s life; or

(2) The member is currently receiving habilitation or integrated health home services; or

~~(2) (3)~~ (2) (3) The member has a history of ~~psychiatric illness~~ severe and persistent mental illness resulting in at least one episode of continuous, professional supportive care other than hospitalization (e.g., counseling, therapy, assertive community treatment, medication management); or

(4) The member has a history of severe and persistent mental illness resulting in involvement in the criminal justice system (e.g., prior incarceration, parole, probation, criminal charges, jail diversion program or mental health court); or

(5) Traditional mental health services available in the member’s community have not been able to meet the member’s needs.

~~b. d.~~ Need for assistance. The member has a need for assistance or is likely to need assistance related to functional impairment arising out of a mental health diagnosis typically demonstrated by meeting at least two of the following criteria on a continuing or intermittent basis for at least ~~two years~~ 12 months:

(1) The member is unemployed, is employed in a sheltered setting, or has markedly limited skills and a poor work history, and the member is currently receiving employment services or the member has a need for employment services to obtain or maintain employment.

(2) The member requires financial assistance ~~for out-of-hospital maintenance and is to reside independently in the community or may be homeless or at risk of homelessness if unable to procure this assistance without help.~~

(3) The member shows ~~severe~~ significant inability to establish or maintain a personal social support system.

(4) The member requires help in basic living skills such as self-care, money management, housekeeping, cooking, and medication management.

(5) The member exhibits ~~inappropriate~~ social behavior that ~~results in a demand for intervention~~ puts the member’s safety or others’ safety at risk, which results in the need for service intervention which may include crisis management or protective oversight.

~~e. e.~~ Income. The countable income used in determining the member’s Medicaid eligibility does not exceed 150 percent of the federal poverty level.

~~d. f.~~ Needs assessment. The ~~interRAI—Child and Youth Mental Health (ChYMH) for youth aged 16 to 18 or the interRAI—Community Mental Health (CMH) for those aged 19 and older~~ LOCUS or CALOCUS tool has been completed, and based on information submitted on the information submission tool and other supporting documentation as relevant, the IME medical services unit has determined that the member is in need of home- and community-based habilitation services. The

~~interRAI—Child and Youth Mental Health (ChYMH) and the interRAI—Community Mental Health (CMH)~~ LOCUS/CALOCUS information submission tools are available on request from the IME medical services unit. Copies of the information submission tool for an individual are available to that individual from the individual's case manager, integrated health home care coordinator, or managed care organization. The designated case manager or integrated health home care coordinator shall:

(1) Arrange for the completion of the ~~interRAI~~ LOCUS or CALOCUS, before services begin and annually thereafter, and more frequently if significant observable changes occur in the member's situation, condition or circumstances.

(2) Use the information submission tool and other supporting documentation as relevant to develop a comprehensive service plan as specified in subrule 78.27(4); and 441—paragraph 90.4(1) "b" before services begin and annually thereafter, and when there is a significant observable change in the member's situation, condition, or circumstances.

e. g. Plan for service. The department or the member's managed care organization has approved the member's comprehensive service plan for home- and community-based habilitation services. Home- and community-based habilitation services included in a comprehensive service plan or treatment plan that has been validated ~~through ISIS by the IME or the member's managed care organization~~ shall be considered approved by the department. Home- and community-based habilitation services provided before approval of a member's eligibility for the program cannot be reimbursed.

(1) The member's comprehensive service plan shall be completed annually according to the requirements of subrule 78.27(4); ~~and 441—paragraph 90.4(1) "b."~~ A service plan may change ~~at any time due to a significant change in the member's needs~~ when requested by the member or the member's interdisciplinary team when there is a significant observable change in the member's situation, condition, or circumstances.

(2) For members receiving home-based habilitation, the service plan shall include the member's LOCUS/CALOCUS actual disposition, the LOCUS/CALOCUS composite score, and each individual domain score for each of the six LOCUS/CALOCUS domains.

~~(2)~~ (3) The member's habilitation services shall not exceed the maximum number of units established for each service in 441—subrule 79.1(2).

~~(3)~~ (4) The cost of the habilitation services shall not exceed unit expense maximums established in 441—subrule 79.1(2).

ITEM 5. Amend subrule 78.27(7) as follows:

78.27(7) Home-based habilitation. "Home-based habilitation" means individually tailored supports that assist with the acquisition, retention, or improvement of skills related to living, working, and recreating in the community.

a. Scope. Home-based habilitation services are individualized supportive services provided in the member's home and community that assist the member to reside in the most integrated setting appropriate to the member's needs. Services are intended to provide for the daily living needs of the member and shall be available as needed during any 24-hour period. The specific support needs for each member shall be determined necessary by the interdisciplinary team and shall be identified in the member's comprehensive service plan. Covered supports include:

- (1) Adaptive skill development;
- (2) Assistance with activities ~~of daily living~~ to address daily living needs;
- (3) Assistance with symptom management and participation in mental health treatment;
- (4) Assistance with accessing physical and mental health care treatment, communication, and implementation of health care recommendations and treatment;
- (5) Assistance with accessing and participating in substance use disorder treatment and services;
- (6) Assistance with medication administration and medication management;
- (7) Assistance with understanding communication whether verbal or written;
- ~~(3)~~ (8) Community inclusion and active participation in the community;
- ~~(4)~~ (9) Transportation;

(5) (10) Adult educational supports, which may include assistance and support with enrolling in educational opportunities and participation in education and training;

(6) (11) Social and leisure skill development;

(7) (12) Personal care; and

(8) (13) Protective oversight and supervision.

b. *Setting requirements.* Home-based habilitation services shall occur in the member's home and community.

(1) A member may live in the member's own home, within the home of the member's family or legal representative, or in another community living arrangement that meets the criteria in 441—subrule 77.25(5).

(2) A member living with the member's family or legal representative is not subject to the criteria in 441—paragraphs 77.25(8) "c" and "d."

(3) A member may not reside in a licensed medical or health care facility or in a setting that is required to be licensed as a medical or health care facility.

c. *Home-based habilitation level of service criteria.* Home-based habilitation services shall be available to members based on the member's most current LOCUS/CALOCUS actual disposition score, according to the following criteria:

(1) Intensive IV residential habilitation services. Intensive IV services are provided 24 hours per day. To be eligible for intensive IV services, a member must meet the following criteria:

1. The member has a LOCUS/CALOCUS actual disposition of level six medically managed residential services, and

2. The member meets the criteria in 441—subparagraph 25.6(8) "c"(3).

(2) Intensive III services are provided 17 to 24 hours per day. To be eligible for intensive III services, the member must have a LOCUS/CALOCUS actual disposition of level five medically monitored residential services.

(3) Intensive II services are provided 13 to 16.75 hours per day. To be eligible for intensive II services, the member must have a LOCUS/CALOCUS actual disposition of level four medically monitored non-residential services.

(4) Intensive I services are provided 9 to 12.75 hours per day. To be eligible for intensive I services, the member must have a LOCUS/CALOCUS actual disposition of level three high intensity community-based services.

(5) Medium need services are provided 4.25 to 8.75 hours per day as needed. To be eligible for medium need services, the member must have a LOCUS/CALOCUS actual disposition of level two low intensity community-based services.

(6) Recovery transitional services are provided 2.25 to 4 hours per day as needed. To be eligible for recovery transitional services, the member must have a LOCUS/CALOCUS actual disposition of level one recovery maintenance and health management.

(7) High recovery services are provided 0.25 to 2 hours per day as needed. To be eligible for high recovery services, the member must have a LOCUS/CALOCUS actual disposition of level zero.

d. *Additional criteria for receiving home-based habilitation services for transition-age youth 16 to 17.5 years of age.*

(1) Members residing in the family home may receive home-based habilitation services as needed, subject to the criteria set forth in this rule.

(2) Members residing outside the family home may only receive home-based habilitation services in residential settings with 16 or fewer beds licensed by the department of inspections and appeals.

(3) The proposed living environment must meet HCBS setting requirements in accordance with 441—subrule 77.25(5).

e. *Additional criteria for receiving home-based habilitation services for transition-age youth 17.5 to 18 years of age.*

(1) Members residing in the family home may receive home-based habilitation services as needed, subject to the criteria set forth in this rule.

(2) Members residing outside of the family home may receive daily home-based habilitation in a provider-owned or controlled setting when the following criteria are met:

1. The proposed living environment must meet HCBS setting requirements in accordance with 441—subrule 77.25(5).

2. All providers of the service setting being requested must meet the following additional safety and service requirements for serving youth under the age of 18:

- Individuals 17.5 to 18 years of age shall receive 24-hour site supervision and support.
- Individuals under the age of 18 may not reside in settings with individuals over the age of 21.
- The comprehensive service plan shall specifically identify educational services and supports for individuals who have not obtained a high school diploma or equivalent.
- For individuals who have obtained a high school diploma or equivalent, the comprehensive service plan shall include supported employment, additional training, or educational supports.

3. The member's parent or guardian has consented to home-based habilitation services.

4. The member is able to pay room and board costs (funding sources may include, but are not limited to, supplemental security income, child support, adoptions subsidy, or private funds).

5. A licensed setting, such as those approved to provide residential-based supported community living, is not available.

~~b.f.~~ Exclusions. Home-based habilitation payment shall not be made for the following:

(1) to (6) No change.